

MEMORANDUM

TO: Members of the Code Revision Commission
FROM: Craig Mortell, Deputy Director, Office of Code Revision
RE: PD 3217 -- Proposed Additions and Revisions
DATE: November 8, 2011

This memo is intended to present to the Commission certain proposed changes in the text of PD 3217, the 2011 technical corrections draft that was discussed by the Commission at its meeting of October 18, 2011. The proposed changes have been prepared in preparation for the Commission's meeting of November 15.

Each proposed change is discussed separately in this memo. For the sake of convenience, an explanation of the proposed change is presented along with the text of the proposed change. The proposed changes are presented in Code cite order. An ordinary PD incorporating the proposed changes will also be available at the November 15 meeting.

The proposed changes discussed in this memo are:

- No. 1: IC 4-21.5-3-1(h)(1).
- No. 2: IC 9-24-19-2.
- No. 3: IC 12-14-46-1.
- No. 4: IC 15-13-3-11(d).
- No. 5: IC 31-19-25.5-5.
- No. 6: IC 31-40-1-2.
- No. 7: IC 35-47-2-17. [delete from draft]
- No. 8: IC 35-51-4-1.

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PROPOSED CHANGE No. 1: A revision of PD 3217's SECTION 13, amending IC 4-21.5-3-1(h)(1).

PD 3217 amends IC 4-21.5-3-1 in pertinent part as follows:

SECTION 13. IC 4-21.5-3-1, AS AMENDED BY P.L.32-2011, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a)

This section applies to:

- (1) the giving of any notice;
- (2) the service of any motion, ruling, order, or other filed item; or
- (3) the filing of any document with the ultimate authority;

in an administrative proceeding under this article.

(b) Except as provided in subsection (c) or as otherwise provided by law, a person shall serve papers by:

- (1) United States mail;
- (2) personal service;
- (3) electronic mail; or
- (4) any other method approved by the Indiana Rules of Trial Procedure.

(c) The following shall be served by United States mail or personal service:

- (1) The initial notice of a determination under section 4, 5, or 6 of this

chapter.

(2) A petition for review of an agency action under section 7 of this chapter.

(3) A complaint under section 8 of this chapter.

(d) The agency shall keep a record of the time, date, and circumstances of the service under subsection (b) or (c).

(e) Service shall be made on a person or on the person's counsel or other authorized representative of record in the proceeding. Service on an artificial person or a person incompetent to receive service shall be made on a person allowed to receive service under the rules governing civil actions in the courts. If an ultimate authority consists of more than one (1) individual, service on that ultimate authority must be made on the chairperson or secretary of the ultimate authority. A document to be filed with that ultimate authority must be filed with the chairperson or secretary of the ultimate authority.

(f) If the current address of a person . . .

(h) The filing of a document with an ultimate authority is complete on the earliest of the following dates that apply to the filing:

(1) The date on which the document is delivered to the ultimate authority under subsection (b) **or** (c) ~~or~~ **and subsection e: (e).**

(2) . . .

In its current form in the Indiana Code, IC 4-21.5-3-1(h)(1) appears as follows:

(1) The date on which the document is delivered . . . under subsection (b), (c), or e.

The Commission directed me to revise PD 3217's amendment of IC 4-21.5-3-1(h)(1). I would propose the following revision for inclusion in the 2012 technical corrections bill:

(h) The filing of a document with an ultimate authority is complete on the earliest of the following revision of IC 4-21.5-3-1(h)(1):

(1) The date on which the document is delivered to the ultimate authority:

(A) under subsection (b) **or** (c); ~~or~~ **and**

(B) in compliance with subsection e: (e).

(2) . . .

It is clear from the context that service under this section must comply with both subsection (e) and either subsection (b) or (c). Subsection (e) tells us specifically WHO must receive notice, while subsections (b) and (c) tell us HOW notice must be sent. That is why "or" is stricken and "and" is added in subsection (h)(1)(A) above.

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PROPOSED CHANGE No. 2: The addition of a proposed amendment to IC 9-24-19-2.

In its opinion of October 24, 2011, in the case of *State of Indiana v. Skylor Gerald*s, the Court of Appeals noted a problem in the current text of IC 9-24-19-2. The problem relates to the reference to "the violation described in subdivision (1)" that appears in IC 9-24-19-2's

subdivision (2).

The text of IC 9-24-19-2 is as follows (with emphasis added):

Sec. 2. A person who operates a motor vehicle upon a highway when the person knows that the person's driving privilege, license, or permit is suspended or revoked, when less than ten (10) years have elapsed between:

(1) the date a judgment was entered against the person for a prior unrelated violation of section 1 of this chapter, this section, IC 9-1-4-52 (repealed July 1, 1991), or IC 9-24-18-5(a) (repealed July 1, 2000); and

(2) the date **the violation described in subdivision (1)** was committed; commits a Class A misdemeanor.

Presumably, the text of IC 9-24-19-2 was intended to say that driving on a suspended or revoked license is a Class A misdemeanor if less than ten years have elapsed between:

(1) the date on which a judgement was entered for a prior unrelated violation; and
(2) *the date of the new violation.*

However, due to the way in which the text of IC 9-24-19-2 is tabulated, the "violation described in subdivision (1)" is not the new violation but *the prior unrelated violation*.

This problem apparently arose in 2000 when the former IC 9-24-18-5 was repealed and its language was used as the basis for IC 9-24-19-1. In the former IC 9-24-18-5, the "violation described in subdivision (1)" was the new violation, not the prior unrelated violation. However, when the text of IC 9-24-18-5 was transformed into the text of IC 9-24-19-2, the "violation described in subdivision (1)" came to refer to the prior unrelated violation rather than the new violation.

I would propose the inclusion of the following in the 2012 technical corrections bill to address the problem identified by the Court of Appeals in IC 9-24-19-2:

SECTION 2. IC 9-24-19-2 IS AMENDED TO READ AS FOLLOWS: Sec. 2. A person who operates a motor vehicle upon a highway when the person knows that the person's driving privilege, license, or permit is suspended or revoked ~~when commits a Class A misdemeanor if~~, less than ten (10) years ~~have elapsed between: before the date on which the person operates the motor vehicle knowing that the person's driving privilege, license, or permit is suspended or revoked, (1) the date~~ a judgment was entered against the person for a prior unrelated:

(1) violation of infraction under section 1 of this chapter; or

(2) offense or infraction under:

(A) this section;

(B) IC 9-1-4-52 (repealed July 1, 1991); or

(C) IC 9-24-18-5(a) (repealed July 1, 2000).

~~and (2) the date the violation described in subdivision (1) was committed; commits a Class A misdemeanor.~~

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PROPOSED CHANGE No. 3: Reversing an apparent transposition error in the text of one of the

chapters added in 2011 as "IC 12-14-45".

Two new chapters numbered as "IC 12-15-45" were added to the Code in 2011. To give the content of each of these chapters a unique place in the Code, PD 3217 repeals both version of "IC 12-15-45" and inserts the text of the chapters back into the Code as the two sections of a new chapter numbered as IC 12-15-46.

The text of the chapter added by SEA 461 [P.L.160-2011], which is being reinserted into the Code as section 1 of the new chapter IC 12-15-46, included a definition of the term "state amendment plan". (The definition is found on page 103, line 15 of PD 3217.) However, the term actually used in the text is not "state amendment plan" but "state plan amendment".

The text of the relevant portions of the new IC 12-15-46-1 (with emphasis added) follows:

(c) As used in this section, **"state amendment plan"** refers to an amendment to Indiana's Medicaid State Plan as authorized by Section 1902(a)(10)(A)(ii)(XXI) of the federal Social Security Act (42 U.S.C. 1315).

(d) Before January 1, 2012, the office shall do the following:

(1) Apply to the United States Department of Health and Human Services for approval of a state plan amendment to expand . . .

(2) Consider the inclusion of additional . . . for the population designated in subdivision (1) in the state plan amendment.

(e) The office shall report concerning its proposed state plan amendment to the Medicaid oversight committee during its 2011 interim meetings. The Medicaid oversight committee shall review the proposed state plan amendment. The committee may make an advisory recommendation to the office concerning the proposed state plan amendment.

I would propose revising PD 3217 slightly by changing the term being defined by the definition in question from "state amendment plan" to "state plan amendment".

(c) As used in this section, **"state plan amendment"** refers to an amendment to Indiana's Medicaid State Plan . . .

PROPOSED CHANGE No. 4: Relocating new language within IC 15-13-3-11(d).

In IC 15-13-3-11, which is amended in SECTION 88 of PD 3217, subsection (a) authorizes the state fair commission to establish a nonprofit subsidiary corporation. In subsections (b), (c), and (e), IC 15-13-3-11 refers to "a subsidiary corporation established under this section". In subsection (d), however, the reference is simply to "a subsidiary corporation". For the sake of consistency and to eliminate any ambiguity connected with the subsection (d) reference, SECTION 85 was included in PD 3217 to amend IC 15-13-3-11(d) by adding "established under this section" after "a subsidiary corporation".

However, due to a drafting error on my part, the words "established under this section" were added to IC 15-13-3-11's subsection (d) in the wrong place -- after "commission" instead of after "corporation".

IC 15-13-3-11(d), as amended in SECTION 88, will be revised in the technical corrections draft

to remove "established under this section" from its current place after "commission" and insert it after "subsidiary corporation".

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PROPOSED CHANGE No. 5: A correction of IC 31-19-25.5-5. (The need for this correction was brought to OCR's attention after the October 18 meeting by LSA attorney Eliza Houston Stephenson.)

IC 31-19-25.5-5 concerns requests for information concerning pre-adoptive siblings. Subsections (b) and (c) of IC 31-19-25.5-5 require the state registrar to release a person's name and address under certain circumstances. However, subsections (b) and (c) both begin with exception clauses, which are shown below in bold text:

(b) **Except as provided under subsections (d) and (e)**, the state registrar shall release ...

(c) **Except as provided under subsections (d) and (e)**, the state registrar shall release ...

Simple logic would lead us to expect that each of the subsections referred to in the exception clauses would bar the state registrar's release of the information, or at least establish some precondition to the state registrar's release of the information. Subsection (d) meets this expectation; it establishes conditions that must be met as a prerequisite to the state registrar's duty to release the information.

(d) Except as provided under subsection (g), the state registrar shall release information under this section if:

(1) both the adoptee and pre-adoptive sibling of the adoptee have submitted requests under section 2 of this chapter; and

(2) the adoptee or pre-adoptive sibling who requested information under section 2 of this chapter submits:

(A) a death certificate;

(B) an obituary; or

(C) any other form of evidence approved by the state department of health;

indicating that a birth parent is deceased to the state registrar for each birth parent who is named on the adoptee's original birth certificate.

Subsection (e), however, neither bars the state registrar's release of the information nor establishes any precondition to the release of the information.

(e) The state registrar shall search the death certificates in the state registrar's possession regarding a birth parent if:

(1) an adoptee and a pre-adoptive sibling of the adoptee have submitted written requests to be in contact; and

(2) a birth parent has filed a nonrelease form under IC 31-19-25.

It is subsection (f) -- not subsection (e) -- that establishes terms constituting a sort of precondition to the state registrar's release of the information.

(f) Except as provided under subsection (g), if, upon searching the death certificates under subsection (e), the state registrar finds that a birth parent is deceased, the state registrar shall:

- (1) inform the adoptee and pre-adoptive sibling of the death; and
- (2) release the information if additional consent is not required by this chapter.

Therefore, I propose that the technical corrections draft be revised to include a SECTION amending IC 31-19-25.5-5 as follows:

SECTION 1. IC 31-19-25.5-5, AS ADDED BY P.L.191-2011, SECTION 55, IS AMENDED TO READ AS FOLLOWS: Sec. 5. (a) This section applies . . .

(b) Except as provided under subsections (d) and ~~(e)~~, (f), the state registrar shall release . . .

(c) Except as provided under subsections (d) and ~~(e)~~, (f), the state registrar shall release . . .

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PROPOSED CHANGE No. 6: A correction of IC 31-40-1-2. (This proposed correction was brought to OCR's attention after the October 18 meeting by the Indiana Judicial Center.)

The Indiana Judicial Center has proposed that IC 31-40-1-2 be amended by inserting "or IC 11-13-4.5-1.5" (a reference to Indiana's version of the Interstate Compact for Juveniles, which was added to the Indiana Code in 2011) at the end of IC 31-40-1-2's subsection (b), as indicated below:

IC 31-40-1-2:

Sec. 2. (a) Except as otherwise provided in this section and subject to:

- (1) this chapter; and
- (2) any other provisions of IC 31-34, IC 31-37, or other applicable law relating to the particular program, activity, or service for which payment is made by or through the department;

the department shall pay the cost of any child services provided by or through the department for any child or the child's parent, guardian, or custodian.

(b) The department shall pay the cost of returning a child under IC 31-37-23 or IC 11-13-4.5-1.5.

(c) ...

Since this proposed amendment would at least create the appearance of imposing additional costs on the Department of Child Services, we have informed the Department of Child Services about it and invited the Department to comment on it. Brady Brookes, the Legislative Director of the Department of Child Services, has informed us that the Department's legal staff is reviewing the proposal.

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PROPOSED CHANGE No. 7: A revision of PD 3217's SECTION 197, amending IC 35-47-2-17. (Recommendation: delete IC 35-47-2-17 from the TC bill draft.)

IC 35-47-2-17 currently reads in pertinent part as follows (with emphasis added):

Sec. 17. No person, **in purchasing or otherwise securing delivery of a firearm or in applying for a license to carry a handgun**, shall knowingly or intentionally:

(1) give false information on a form required to:

(A) purchase or secure delivery of a firearm; or

(B) apply for a license to carry a handgun; or

(2) offer false evidence of identity.

In addition to any penalty provided by this chapter . . .

The problem that had been perceived in the current text: It would seem that the phrase shown above in bold text (i.e., "in purchasing or otherwise securing delivery of a firearm or in applying for a license to carry a handgun") is redundant as it applies to subdivision (1).

It seemed unnecessary to say: "No person, in purchasing or otherwise securing delivery of a firearm or in applying for a license to carry a handgun, shall knowingly or intentionally give false information on a form required to purchase or secure delivery of a firearm or apply for a license to carry a handgun" because it is unlikely that a person would "knowingly or intentionally give false information on a form required to purchase or secure delivery of a firearm or apply for a license to carry a handgun" UNLESS the person was "purchasing or otherwise securing delivery of a firearm or in applying for a license to carry a handgun".

Consequently, the proposed change in PD 3217 was intended to restructure IC 35-47-2-17(a) so as to make the phrase "in purchasing or otherwise securing delivery of a firearm or in applying for a license to carry a handgun" apply only to subdivision (2).

However, upon further consideration, I recognize that separating the phrase "in purchasing or otherwise securing delivery of a firearm or in applying for a license to carry a handgun" from subdivision (1) could be interpreted as a subtle substantive change in the law.

As IC 35-47-2-17(a)(1) currently reads, a person is prohibited from "knowingly or intentionally giving false information on a form required to purchase or secure delivery of a firearm or apply for a license to carry a handgun" **only** if the person gives the false information on the form "in purchasing or otherwise securing delivery of a firearm or in applying for a license to carry a handgun". Presumably, therefore, to violate IC 35-47-2-17(a)(1) a person would have to be in the process of "purchasing or otherwise securing delivery of a firearm or ... applying for a license to carry a handgun". A person who knowingly or intentionally enters false information on a form connected with a firearm purchase or an application for a license to carry a handgun would **not** commit a violation under IC 35-47-2-17(a) if that person were not himself or herself seeking to purchase a firearm or obtain a license to carry a handgun.

Because separating the phrase "in purchasing or otherwise securing delivery of a firearm or in applying for a license to carry a handgun" from subdivision (1) of IC 35-47-2-17(a) could be interpreted as a subtle substantive change in the law, I would now recommend that the SECTION amending IC 35-47-2-17 be deleted from the 2012 TC bill draft.

PROPOSED CHANGE No. 8: A correction of IC 35-51-4-1. (The need for this correction was brought to OCR's attention after the October 18 meeting by Dhiann Kinsworthy-Blye of the

Indiana Office of Inspector General.)

IC 35-51-4-1 sets forth a list of sections in Title 4 of the Code that define crimes. Each section included in the list is described in a short parenthetical statement. The list includes the following (with emphasis added):

Sec. 1. The following statutes define crimes in IC 4:

...

IC 4-31-13-3 (Concerning horse racing).

IC 4-31-13-3.5 (Concerning horse racing).

IC 4-31-13-9 (Concerning the lottery).

IC 4-31-13-9, however, does not concern the lottery. Rather, the entire article IC 4-31-13 concerns pari-mutuel wagering on horse races. I would propose that the 2012 technical corrections bill include a SECTION amending IC 35-51-4-1 in pertinent part as follows:

SECTION 201. IC 35-51-4-1, AS ADDED BY P.L.70-2011, SECTION 1, IS AMENDED TO READ AS FOLLOWS: Sec. 1. The following statutes define crimes in IC 4:

...

IC 4-31-13-9 (Concerning ~~the lottery~~). **horse racing**).

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